

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on January 27, 1999
at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 174, 1/27/1999
Executive Action: None

HEARING ON SB 174

Sponsor: SENATOR JOHN BOHLINGER, SD 7, BILLINGS

Proponents:

Carol Gibson, Yellowstone Valley Citizens Council and Northern
Plains Resource Council, Billings, MT

Bill Chicanni, Retired Teacher, Billings, MT

Paul Fitzgerald, Volunteer for American Lung Association,
Billings, MT

Denise RothBarber, Billings, MT

Janet Ellis, Montana Audubon and Yellowstone Valley Audubon

Anne Hedges, Montana Environmental Information Center

Ed Zaidlicz, Billings - written testimony

Joe Walter, Billings - written testimony

Garlena Cerovski, Billings - written testimony

Opponents:

Mark Simonich, Director, Department of Environmental Quality

Gail Abercrombe, Executive Director, Montana Petroleum
Association

Webb Brown, Montana Chamber of Commerce

Charles Brooks, Billings Area Chamber of Commerce

Dr. Carlton Grimm, Montana Power Company, Butte

Mark Baker, PP&L Montana

Ron Fletcher, Refinery Manager, Cenex Harvest States, Laurel

Jon Nickel, Plant Manager, ASARCO - East Helena

Leland Griffin, Montana Refining Company, Great Falls

David Dedats, Exxon Refinery, Billings

Don Allen, Western Environmental Trade Association

John Augustine, Conoco

Patrick Montalban, Northern Montana Oil & Gas Association

Opening Statement by Sponsor:

SENATOR JOHN BOHLINGER, SD 7, BILLINGS, spoke in support of SB
174 as per **EXHIBIT**(nas21a01).

Proponents' Testimony:

Carol Gibson, Yellowstone Valley Citizens Council and Northern
Plains Resource Council, spoke in support of SB 174. Her
testimony was similar to that of Mary Fitzpatrick, Chair of the
Yellowstone Valley Citizens Council as per **EXHIBIT**(nas21a02). She
also referred to the attached map of Billings showing the
location of industry in relation to the Ambient Air Monitors
EXHIBIT(nas21a03).

{Tape : 1; Side : A; Approx. Time Counter : 0 - 15.4; Comments :
Tape to this point did not record.}

Bill Chicanni, Retired Teacher, Billings, spoke in support of **SB 174**. He stated this is a woman's and children's issue. They are affected a lot more than male adults due to their smaller lung capacity. He claimed the focus of the bill was for the long-range health benefits to the children and inhabitants of the community. A community needs assessment and teacher survey showed clean air being a top priority and that children in the classroom are affected by SO₂, i.e. allergies and respiratory problems. He feels **SB 174** is the right thing to do.

Paul Fitzgerald, Volunteer for the American Lung Association, spoke in support of **SB 174** as per written testimony prepared by Dennis Alexander, Executive Director of the American Lung Association of the Northern Rockies **EXHIBIT(nas21a04)**.

Denise Roth Barber, Billings, spoke in support of **SB 174** as per written testimony **EXHIBIT(nas21a05)**.

Janet Ellis, Montana Audubon and Yellowstone Valley Audubon, spoke in support of **SB 174** to assure the citizens in the Billings air shed compliance with state SO₂ standards.

Anne Hedges, Montana Environmental Information Center, spoke in support of **SB 174**. This is a very simple bill. Whenever clean air regulations are tightened in this country, the large industrial companies say we do not know what this means, we do not know how to do it, it is going to be far too expensive. Every time these things are posed on them, for the protection of public health, they come through and meet the standards. They are doing things they said before they could not do and we are happy about that. We urge your support of this bill because it is just common sense.

EXHIBIT(nas21a06) - Written testimony from **Ed Zaidlicz**, a private individual in Billings in support of **SB 174** who was not able to attend the hearing.

EXHIBIT(nas21a07) - Written testimony from **Joe Walter**, a private individual in Billings in support of **SB 174** who was not able to attend the hearing.

EXHIBIT(nas21a08) - Written testimony from **Garlena Cerovski**, a private individual in Billings in support of **SB 174** who was not able to attend the hearing.

Opponents' Testimony:

Mark Simonich, Director, Department of Environmental Quality, spoke in opposition to **SB 174** as per his written testimony **EXHIBIT (nas21a09)**.

{Tape : 1; Side : A; Approx. Time Counter : 15.4 - 44.2; Comments : Turned Tape to Side B. Tape is not working properly. There is a lot of static and interference.}

Gail Abercrombe, Executive Director, Montana Petroleum Association, spoke in opposition to **SB 174**. The association represents the users, the pipeline people, refiners and marketers of petroleum products in Montana. They stand in opposition to the bill because it is not needed. The state SO2 standards have been met and the monitoring data has that recorded. The monitors have been moved repeatedly. It is affectionately called plume chasing in order to try to find those hot spots. Despite plume chasing, they are still meeting the state standards. **EXHIBIT (nas21a10)**. The federal standards are set to protect the most susceptible population, the exercising asthmatic.

The bill would be costly. There are four petroleum refineries in Montana; two of those are in Billings, one in Laurel and one in Great Falls. Last session the Hanna Bill was repealed and industries were supportive of the repeal. These targeted refineries are major property tax payers in their respective counties. The average annual wage for a petroleum refining job is over \$55,000 per year. These dollars find their way to many small businesses. They employ nearly 800 men and women plus contracting of various maintenance and service companies. When will the power of environmental mandates be enough?

Recently the sponsor was quoted in the *Billings Gazette* saying, "until we have some plan in place to identify precisely where the emissions are coming from, we will provide the community with a false sense of security that all is well." There are continuous emissions monitors in place to determine where the emissions come from which were not in place in 1997 but they are now, at the requirement of the State Implementation Plan. Rather than providing a false sense of security, we are providing our citizens with a false sense of alarm.

Webb Brown, Montana Chamber of Commerce, spoke in opposition to **SB 174**. These industries have invested hundreds of millions of dollars to get to the point they are now. It has worked and is working. These industries contribute major amounts to the tax base in their communities as well as to the prosperous economy throughout of the State of Montana. We are 51st in the nation in

the per capita income in this state and yet some of our highest paying jobs we have tried to limit or jeopardize. He questioned why the very businesses that are providing us with high level jobs, high taxation and high benefits to the State of Montana should be jeopardized. He urged the committee to oppose **SB 174** with respect to Senator Bohlinger.

Charles Brooks, Billings Area Chamber of Commerce, stated no one would argue the need to protect our environment nor a high quality of life. When talking about a high quality of life a job is #1. These industries targeted by this bill are good corporate partners, employers, and citizens in our community. They vigorously oppose any legislation or regulations that lack a valid scientific justification, valid risk assessment, and a positive cost analysis. They will continue to support air quality monitoring as the proper measurement of SO2 levels for determining compliance with the state and federal standards. He stated he was personally acquainted with the problem of respiratory disease in his family. There are many elements within our communities and in the air that we breath that cause respiratory problems, not just SO2. He urged defeat of this unnecessary legislation.

Dr. Carlton Grimm, Montana Power Company, Butte, spoke in opposition to **SB 174** as per written testimony **EXHIBIT(nas21a11)**.

Mark Baker, PP&L Montana, spoke in opposition to **SB 174** as per written testimony **EXHIBIT(nas21a12)**.

Ron Fletcher, Refinery Manager, Cenex Harvest States, Laurel, stated Cenex had invested heavily in reducing its emissions over the last seven to eight years. In 1998 Cenex emissions have fallen to approximately 2900 tons a year from highs in the early '90s of over 9000 tons. The downward trend is continuing. They feel **SB 174** fails to recognize this trend in reducing emissions and the tremendous investments to do so. A margin for safety in Montana is already in place. He recommended DO NOT PASS on **SB 174**.

Jon Nickel, Plant Manager, ASARCO - East Helena, stated this legislation is not just a Billings SO2 bill but instead affects the entire state including the ASARCO - East Helena plant. ASARCO has invested more than \$100 million in environmental cleanup and controls in the East Helena Plant. They have worked hard and in good cooperation with MT Department of Environmental Quality to achieve compliance with state and federal SO2 standards, as measured through time tested measurement methods, namely monitoring on the model hot spots in the area. They are hard pressed to see the benefits of this bill especially at a

facility where monitoring compliance is fully adequate to demonstrate that the health of the people in the area is protected. They encourage a DO NOT PASS recommendation.

Leland Griffin, Montana Refining Company, Great Falls, stated they stand in opposition to **SB 174**. They have not had a monitor accedence of state standards for SO₂ since their monitor was installed in 1994. If they were to go to model plans as this bill proposes, they would have to reduce their potential to emit emissions by at least 40%. Their actual emissions are much lower than the current potential to emit. To obtain this 40% reduction in potential to emit, real hardware has to be installed. This hardware would cost Montana Refining Company at least \$2 million and \$300,000 to \$500,000 per year increased operating expense. This has no real benefit to the environment. They feel this bill is an anti-industry, anti-jobs bill.

David Dedats, Exxon Refinery, Billings, spoke in opposition to **SB 174**. They oppose the bill because they believe existing law is protective of public health. The highest SO₂ level monitored in Billings/Laurel ran 72nd out of approximately 700 sites in the United States. Preliminary 1998 data looks equal to or better than 1997. No accedences of state SO₂ standards have occurred in the past two years in the Billings/Laurel area. Exxon supports the current State Implementation Plan (**SIP**) and they believe that plan, which went into effect in March, 1998, should be allowed to work. They are committed to a good working relationship designed to progress air quality improvement initiatives.

They have concerns about the bill language which appears to be vague, difficult to interpret and ultimately confusing to implement. It is unclear if the proposed limitation on allowable accedences is based upon monitoring or modeling. It is also unclear as to the scientific basis reducing the number of allowable accedences to three. Exxon believes any government action must be based on sound science using cross benefit analysis, actual compliance information and consistent enforcement. They do not believe **SB 174** meets that reasonable standard. They feel it could require the implementation of a new **SIP**. Their experience tells them the SIP process could be long and costly. They feel the current **SIP** process is working and believe industry is meeting their commitment to reduce SO₂ emissions and will work for cost effective methods for further air quality improvements.

Don Allen, Western Environmental Trade Association, stated the committee has all the reasons in front of them for a DO NOT PASS recommendation. Do not run out the industries we have in Montana.

John Augustine, Conoco, spoke in opposition to **SB 174**. The safeguards a refinery may employ are penalized in this bill with the maximum accedences. Conoco is committed to minimizing the impact of our operation in the Billings community where we operate. This committee needs to understand the impacts and ramifications of the bill and he encouraged a DO NOT PASS recommendation.

Patrick Montalban, Northern Montana Oil & Gas Association, spoke in opposition to this bill and thanked the majors for their excellent presentation here today. He feels the most important part of this legislature right now is jobs. He commends the industry for the excellent paying jobs they provide to the community. He stands in opposition hesitantly because of **SEN. BOHLINGER**, as he grew up just down the street from him and has a great deal of respect for him, but feels it is more important for jobs in our fine state to stand in opposition.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 35; Comments : Tape not working properly.}

Questions from Committee Members and Responses:

SENATOR GROSFIELD questioned if the committee passed the bill as is, how would the Department interpret "close proximity"? **Bob Raisch, DEQ**, said they would consider first if they were major sources, i.e. are they 100 ton or 250 ton SO2 sources. To determine close proximity, would they be sources included in a dispersion model if studying the area to determine what type of controls would be necessary. In **Mr. Simonich's** testimony, the areas identified were areas that would be interpreted as being in close proximity. He was unaware of any others at this time.

SEN. GROSFIELD questioned large or small sources. With the language in the bill as it is, would you include them all? **Bob Raisch** responded their interpretation would be determined by what is defined as major sources. There are many very tiny sulphur dioxide sources, anyone burning fuel oil has some sulphur dioxide emissions. The industrial definition of a major source is 100 tons in a non-attainment area or 250 tons outside of a non-attainment area.

SEN. GROSFIELD stated the fiscal note says it would require reductions in allowables and moderate reduction in actual emissions. Where is this going to happen? **Bob Raisch** stated when they had originally done the analysis it occurred to them that sources such as Exxon and Montana Power would need about 40% reduction in allowable emissions to meet, at that time, the 18 exemptions in the 1 hour standard. Now they are talking about

only 3 exemptions so there would be additional reductions. The analysis has not yet been concluded.

In Montana Power's case, they are running close enough to emission limitations, it would take a scrubber for them to achieve compliance. We also believe Exxon would be required to put process changes or hardware on to comply as would Montana Sulphur, the refinery in Great Falls and ASARCO in East Helena. Those are preliminary looks, the modeling has not been done to know for sure but that is our best guess.

SENATOR KEATING questioned Section 1. **Bob Raisch** stated from the analysis the control plan may determine that you would need more reductions in one than another.

SENATOR ROUSH stated in Section 2 language we had heard testimony today that a plant can be upset with a power failure and emergency shut down procedures. He was concerned with not knowing how many times a plant has problems with power failure and would that be a legitimate reason not to charge these companies with the 3 times? **Mark Simonich**, stated it would be. In fact, quite often within the air quality permits they issue, they provide allowances for malfunctions. When there is a legitimate malfunction that has occurred, something that is clearly beyond the control of the company or the operator of the plant, they recognize that and do not count that against industry as a violation.

SEN. ROUSH questioned how weather conditions and atmosphere entered into the whole equation of the emissions the valleys, such as the Yellowstone valley. Is the provision of weather conditions exempt? **Mark Simonich** said no, it is the meteorological conditions that cause them to look at the standards and allowable caps. They can determine whether or not any source is currently exceeding their emission limits right today. The variable that no one can control is the weather. They try to look at the absolute worst type of weather conditions that may result and then develop the model to try and fill the protection level against that so, even under those worst case conditions, there will not be accedences. The way we have tended to look at this, and regarding the question about Section 2, does the reduction of accedences apply on the monitoring side or the modeling side? The way we read the bill we believe we would have to model in, on the modeling side, the 3 accedences as opposed to 18 accedences. It would tend to ratchet down any potential emissions and he thought even exacerbate any potential implications from meteorological conditions.

SEN. ROUSH questioned in Section 2 what the penalty would be or is there a set penalty if the violation exceeded 3 times in a 12 month period for these companies? **Bob Raisch** stated they would enforce violations of the standards, even as they exist now, by taking direct enforcement if they can identify the source responsible. The penalty is \$10,000/day. In most cases a monitor violation would be required.

SENATOR TAYLOR questioned why the City of Billings did not propose this legislation? **Mark Simonich** stated the crux of the legislation is to require that additional emission plans be adopted and the standard be tightened. Local government does not have that authority. **SENATOR BOHLINGER** responded the City Council is not here today as they are hesitant to support a state standard for SO₂ in the Yellowstone Valley.

SENATOR COLE questioned, from the testimony, it was stated it would take between 20 and 50 million dollars to retrofit the Corette facility alone? **Mark Baker** responded from the indication they have from the present owners, that was correct.

SEN. COLE asked if he could be given a little history on the Coal Strip plants and what major effects this bill might have on Coal Strip? **Dr. Carlton Grimm** responded to the question but the tape was too garbled to hear the response.

SENATOR WILSON asked if there was any hard data to back up the American Lung Association testimony? **Bob Raisch** stated there was no specific data for Billings but did agree that short emissions do affect asthmatics.

SEN. WILSON questioned the process of refining gasoline, diesel fuel and jet fuel and where in that process is sulphur dioxide produced? **Dr. Carlton Grimm** responded to the question but the tape was too garbled to hear the response.

SENATOR KEATING questioned if a controlled chamber study had been conducted for asthmatics. **Bob Raisch** stated it had been and their level was moderate (.2PPM) after exercising.

CHAIRMAN CRISMORE questioned the effective date thinking, upon passage, may be too soon. **SEN. BOHLINGER** responded it was selected because the people within the District have been living with this for ten years now and although they appreciate the work industry has done already, they are anxious to have this legislation in place.

Closing by Sponsor:

SENATOR BOHLINGER closed by saying we need emission control to comply with the state standard, the State Implementation Process **(SIP)** is not enough. Billings has very interesting topography with the river bottom and flatter terrain transcending to the rims. It is not uncommon for air inversions. He thought the testimony from **Mr. Simonich** was very interesting and felt it was more informational than opponent testimony. He does not have an event the bill would trigger, rather the bill is anticipatory of future events. He brought the issue forward because it is very important to the people in his district and he hoped the committee would give it due consideration because it is a serious health issue. He thanked the committee for the good and fair hearing.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 35.1; Comments : Tape had a great deal of interference. Did not record any of meeting the last 10 mins. approx.}

ADJOURNMENT

Adjournment: 5:05 P.M.

SEN. WILLIAM CRISMORE, Chairman

JYL SCHEEL, Secretary

WC/JS

EXHIBIT (nas21aad)